

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2004 FEB -6 P 5:34
U.S. DISTRICT COURT
MASS.
JAN K'S OFFICE
FILED

JUAN CARLOS GOMEZ,)
Plaintiff,)
v.)
UNITED STATES IMMIGRATION)
and NATURALIZATION SERVICE,)
Defendant.)
No. 03cv30283-KPN

ANSWER

The defendant, the United States Immigration and Naturalization Service ("INS"),¹ answers the plaintiff's complaint as follows.

1. As to the first unnumbered paragraph, the defendant has insufficient knowledge or information upon which to form a belief and, therefore, leaves the plaintiff to his proof.
2. As to the second unnumbered paragraph, the defendant has insufficient knowledge or information upon which to form a belief and, therefore, leaves the plaintiff to his proof.
3. As to the third unnumbered paragraph, the defendant admits that the United States Public Health Service did not approve surgery for the plaintiff. As to the remainder of said paragraph, the defendant has insufficient knowledge or information upon which to form a belief and, therefore, leaves the plaintiff to his proof.

¹The former INS is now named the Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

FIRST AFFIRMATIVE DEFENSE

The court lacks subject matter jurisdiction under the Federal Tort Claims Act because the plaintiff failed to file an administrative claim.

SECOND AFFIRMATIVE DEFENSE

The court lacks subject matter jurisdiction because the United States has not waived sovereign immunity for constitutional torts.

THIRD AFFIRMATIVE DEFENSE

The injuries and damages alleged, if any, were not caused by a negligent or wrongful act of an employee of the United States of America.

FOURTH AFFIRMATIVE DEFENSE

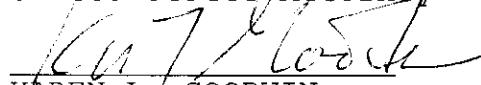
The plaintiff's claim is based on alleged negligence of a government employee exercising a discretionary function. Accordingly, the court lacks subject matter jurisdiction because the United States has not waived its sovereign immunity for alleged acts or omissions involving a discretionary function.

FIFTH AFFIRMATIVE DEFENSE

The injuries and damages alleged, if any, were not caused by a negligent or wrongful act of an employee of the United States of America.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: 

KAREN L. GOODWIN
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(413) 785-0235

DATED: February 6, 2004

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

JUAN CARLOS GOMEZ
191567-HCC
177 Weston Street
Hartford, CT 06120

This 6th day of February, 2004.



KAREN L. GOODWIN
ASSISTANT UNITED STATES ATTORNEY